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10 **UNITED STATES DISTRICT COURT**  
11 **DISTRICT OF NEVADA**

12 UNITED STATES OF AMERICA,  
13 v.  
14 CAROL KIRBY,  
15 Defendant.

2:23-CR-191-APG-NJK

**ORDER**

**Reply to Non-Response to United States  
of America's Motion to Prevent the Sale  
of 2284 Mesa Canyon Drive, Laughlin,  
Nevada 89029, ECF No. 23**

16 The government certifies this Reply is filed timely.<sup>1</sup>

17 The government replies to the failure to respond by Clark County Treasurer  
18 (Treasurer) and the failure to respond by Canyon Terrace Homeowners Association  
19 (Canyon Terrace HOA), to the Government's Motion to Prevent the Sale of 2284 Mesa  
20 Canyon Drive, Laughlin, Nevada 89029 (2284 Mesa Canyon).<sup>2</sup> The government filed the  
21 Motion on May 24, 2024, and served the Motion on Clark County and the Treasurer by  
22 personal service on June 12, 2024, served Canyon Terrace HOA and its affiliates by  
23 personal service on June 18, 2024, and served potential interested parties by regular first  
24 class mail and certified mail return receipt requested on May 31, 2024.<sup>3</sup> Because Clark  
25 County, the Treasurer, and Canyon Terrace HOA and its affiliates failed to respond to the  
26

27 <sup>1</sup> LR 7-2(b) and LCR 12-1(a)(3).

28 <sup>2</sup> United States of America's Motion to Prevent the Sale of 2284 Mesa Canyon Drive,  
Laughlin, Nevada 89029 (Motion), ECF No. 23.

<sup>3</sup> Motion, ECF No. 23; Certificate of Service, ECF No. 42.

1 government's Motion, they consented to granting the motion and preventing the sale of  
 2 2284 Mesa Canyon.<sup>4</sup>

3 The government requested an Order preventing the Treasurer's tax sale and Canyon  
 4 Terrace HOA's default proceedings and foreclosure sale because 21 U.S.C. § 853(k)  
 5 prohibits the Treasurer and the HOA from selling the property since the government has  
 6 alleged 2284 Mesa Canyon is subject to forfeiture in the indictment; the United States has  
 7 authority to protect its forfeiture interest in 2284 Mesa Canyon under 21 U.S.C. § 853(c)  
 8 and 853(e)(1)(A); and the Property Clause and Supremacy Clause of the U.S. Constitution  
 9 prevent the Treasurer and the HOA from disposing of property belonging to the United  
 10 States.

11 Section 853(k) prohibits any person or entity to "commence an action at law or  
 12 equity against the United States concerning the validity of" her, his or its "alleged interest in  
 13 the property subsequent to the filing of an indictment... alleging that the property is subject  
 14 to forfeiture...."<sup>5</sup>

15 The United States has authority to seek the preservation of property for forfeiture.  
 16 Under 21 U.S.C. § 853(c), the property "vests in the United States upon the commission of  
 17 the act giving rise to [the] forfeiture...."<sup>6</sup> Under 21 U.S.C. § 853(e)(1)(A), "the court  
 18 may...take any... action to preserve the availability of property... upon the filing of an  
 19 indictment... charging a violation... for which criminal forfeiture may be ordered...."<sup>7</sup>

20 The interests of the Treasurer and Canyon Terrace HOA do not supersede the  
 21 United States' interest in the property<sup>8</sup> and the non-judicial act to sell the property is an  
 22

23 <sup>4</sup> LCR 47-3 (formerly LCR 47-9) ("The failure of an opposing party to include points and  
 24 authorities in response to any motion constitutes a consent to granting the motion"); *United  
 25 States v. Martinez*, Nos. 2:04-CR-00286-KJD-(GWF) and 2:05-CV-1527-KJD-(GWF), 2006  
 26 WL 1215173, 1 (D. Nev. May 2, 2006); *United States v. Martinez-Rodriguez*, No. 2:08-CR-  
 27 0093-JCM-(RJJ), 2009 WL 211906, 1 (D. Nev. Jan. 23, 2009); *Federal Trade Commission v.  
 28 OMICS Group Inc.*, No. 2:16-CV-02022-GMN-VCF, 2017 WL 6806802, 2 (D. Nev. Dec. 15,  
 2017).

<sup>5</sup> 21 U.S.C. § 853(k) (ellipses added); *United States v. MacInnes*, 223 F. App'x 549, 552 (9th Cir. 2007) (unpublished); *United States v. Lazarenko*, 476 F.3d 642, 647-48 (9th Cir. 1999).

<sup>6</sup> 21 U.S.C. § 853(c) (brackets and ellipsis added).

<sup>7</sup> 21 U.S.C. § 853(e)(1)(A) (ellipses added).

<sup>8</sup> *Rust v. Johnson*, 597 F.2d 174, 179 (9th Cir. 1979), superseded by statute on other grounds.

1 improper act against the United States and violates the Property Clause, Article IV, Section  
2 3, Clause 2, and the Supremacy Clause of Article VI, Clause 2 of the United States  
3 Constitution.<sup>9</sup>

4 A tax sale and a default foreclosure sale are statutorily prohibited at this time because  
5 the United States has a forfeiture interest in the property. The Treasurer and Canyon  
6 Terrace HOA cannot sell 2284 Mesa Canyon under 21 U.S.C. § 853, the Property Clause,  
7 and the Supremacy Clause.

8 **CONCLUSION**

9 Based on the foregoing reasons, this Court should enter an Order to prevent the  
10 Clark County Treasurer from proceeding with a Tax Sale and to prevent Canyon Terrace  
11 Homeowners Association from proceeding with a HOA default foreclosure sale of 2284  
12 Mesa Canyon Drive, Laughlin, Nevada 89029, limited during the pendency of this case so  
13 that the Clark County Treasurer and the HOA is not prohibited from ever selling this  
14 property via tax sale or HOA foreclosure sale should future owners default.

15 Dated: August 6, 2024.

16 Respectfully submitted,

17 JASON M. FRIERSON  
United States Attorney

18 /s/ Daniel D. Hollingsworth  
19 DANIEL D. HOLLINGSWORTH  
Assistant United States Attorney

21 IT IS SO ORDERED:

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23  
24 ANDREW P. GORDON  
UNITED STATES DISTRICT JUDGE

25 Dated: August 19, 2024  
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28 <sup>9</sup> See *Id.*; see *Yunis v. United States*, 118 F. Supp. 2d 1024, 1031 (C.D. Cal. 2000); see *Kleppe v. New Mexico*, 426 U.S. 529 (1976).